
Chapter 2: The Criminal Justice System Continuum

Section 1, Federal and State Jurisdiction

Abstract

An understanding of the role and functions of the various court systems in the United States and South Carolina provides victim service providers with a solid foundation for understanding the dynamics of the law. The U.S. judicial system can be confusing and frustrating to victims when they are first exposed to it. Knowing some of the rationale for its present day composition may help victims understand the foundations of our judicial system and the manner in which laws operate and interact. Likewise, knowledge of the justice system in South Carolina is also important for victim service providers.

Learning Objectives

Upon completion of this section, students will understand the following concepts:

- The principle of federalism and how it affected the structure of our court system.
- How the dual system of state and federal courts functions.
- The characteristics of American court systems.
- How the juvenile court system functions.

Statistical Overview

- During each fiscal year, 1996 and 1997, U.S. district courts terminated an average of 296,000 cases. Approximately 84% of these cases were civil, and 16% were criminal cases (BJS 1999).
- Of the nearly 500,000 federal civil cases terminated during fiscal years 1996-97, 19% (96,284) were tort claims in which plaintiffs claimed injury, loss, or damage from defendants' negligent or intentional acts (Ibid.).
- Of the estimated 1.76 million cases involving delinquency charges handled in U.S. courts with juvenile jurisdiction in 1996, 53% were processed formally, either by filing a delinquency petition in the juvenile court or waiving the case to criminal court (Stahl 1999).

Characteristics of the American Judicial System

In order to understand the principles of federal and state court jurisdiction, it is essential to have a clear understanding of how the American judicial system functions. The following section provides a brief overview of the judicial system in the United States.

HISTORICAL CONTEXT: THE PRINCIPLE OF FEDERALISM

The court system in the United States is based upon the principle of federalism. The first Congress established a federal court system, and the individual states were permitted to continue their own judicial structure. There was general agreement among our nation's founders that individual states needed to retain significant autonomy from federal control. Under this concept of federalism, the United States developed as a loose confederation of semi-independent states having their own courts, with the federal court system acting in a very limited manner. In the early history of our nation, most cases were tried in state courts. It was only later that the federal government and the federal judiciary began to exercise jurisdiction over crimes and civil matters. Jurisdiction in this context simply means the ability of the court to enforce laws and punish individuals who violate those laws.

A dual system of state and federal courts. As a result of this historical evolution, a dual system of state and federal courts exists today. Therefore, federal and state courts may have concurrent jurisdiction over specific crimes. For example, a person who robs a bank may be tried and convicted in state court for robbery, then tried and convicted in federal court for the federal offense of robbery of a federally-chartered savings institution.

The court system performs its duties with little or no supervision. Another characteristic of the American court system is that it performs its duties with little or no supervision. A Supreme Court Justice does not exercise supervision over lower court judges in the same way that a government supervisor or manager exercises control over his or her employees. The U.S. Supreme Court and the various state supreme courts exercise supervision only in the sense that they hear appellate cases from lower courts and establish certain procedures for these courts.

Specialization occurs primarily at the state and local level. A third feature of the U.S. court system is one of specialization that occurs primarily at the state and local level. In many states, courts of limited jurisdiction hear misdemeanor cases. Other state courts of general jurisdiction try felonies. Still other courts may be designated as juvenile courts and hear only matters involving juveniles. This process also occurs in certain civil courts that hear only family law matters, probate matters, housing matters, or civil cases involving damages. At the

federal level, there are courts such as bankruptcy that hear only cases dealing with specific matters.

Geographic organization of the American court system. The fourth characteristic of the American court system is its geographic organization. State and federal courts are organized into geographic areas. In many jurisdictions these are called judicial districts and contain various levels of courts. For example, on the federal level, the 9th Circuit Court of Appeals has district (trial) courts that hear matters within certain specific boundaries, and an appellate court that hears all appeals from cases within that area. Several studies have been conducted regarding the difference in sentences for the same type of crime in geographically distinct courts. For example, in Iowa the average sentence for motor vehicle theft was forty-seven months while the average sentence for the same offense in New York was fourteen months. (Pursley 1994). This should not be taken as a criticism; rather it may reflect different social values and attitudes within specific geographic areas.

The State Court System

Historically each of the thirteen original states had their own unique court structure. This independence continued after the American Revolution and resulted in widespread differences among the various states, some of which still exist today. Because each state adopted its own system of courts, the consequence was a poorly planned and confusing judicial structure. As a result, there have been several reform movements whose purpose has been to streamline and modernize this system.

Many state courts can be divided into three levels:

- Trial courts.
- Appellate courts.
- Supreme courts.

TRIAL COURTS

Trial courts are where criminal cases start and finish. The trial court conducts the entire series of acts that culminate in either the defendant's release or sentencing. State trial courts can be further divided into courts of:

- Limited or special jurisdiction.
- Courts of general jurisdiction.

The nature and type of case determines which court will have jurisdiction.

Limited jurisdiction. Courts that only hear and decide certain limited legal issues are courts of limited jurisdiction:

- Courts of limited jurisdiction hear and decide issues such as traffic tickets or set bail for criminal defendants.
- Typically, these courts hear certain types of minor civil or criminal cases.
- There are approximately 13,000 local courts in the United States.
- They are called county, magistrate, justice or municipal courts.
- Judges in these courts may be either appointed or elected.

In many jurisdictions these are part-time positions, and the incumbent may have another job or position in addition to serving as a judge. However, simply because they handle minor civil and criminal matters does not mean these courts do not perform important duties. Often, the only contact the average citizen will have with the judicial system occurs at this level.

In addition, courts of limited jurisdiction may hear certain types of specialized matters such as:

- Probate of wills and estates.
- Divorces.
- Child custody matters.
- Landlord-tenant disputes.
- Juvenile proceedings.

These types of courts may be local courts or, depending on the state, may be courts of general jurisdiction that are designated by statute to hear and decide specific types of cases.

General jurisdiction. Courts of general jurisdiction are granted authority to hear and decide all issues that are brought before them. These are courts that normally hear all major civil or criminal cases. These courts are known by a variety of names, such as:

- Superior Courts.
- Circuit Courts.
- District Courts.

- Courts of Common Pleas.

Since they are courts of general jurisdiction, they have authority over all types of cases and controversies and, unless otherwise geographically limited, may decide issues that occur anywhere within the state.

Typically, these courts hear civil cases involving the same types of issues that courts of limited jurisdiction hear, although the amount of damages will be higher and may reach millions.

- These courts also hear the most serious forms of criminal matters including death penalty cases.
- These courts may issue injunctions that prohibit performing certain acts or require individuals to perform certain functions or duties.
- This authority is derived from the equity power that resides in courts of general jurisdiction.

Equity is the concept that justice is administered according to fairness as contrasted with the strict rules of law. In early English Common Law, such separate courts of equity were known as Courts of Chancery. These early courts were not concerned with technical legal issues; rather they focused on rendering decisions or orders that were fair or equitable. In modern times, the power of these courts has been merged with courts of general jurisdiction, allowing them to rule on matters that require fairness as well as the strict application of the law.

- The power to issue temporary restraining orders (TROs) in spousal abuse cases comes from the equitable powers of the court.

APPELLATE JURISDICTION

Appellate jurisdiction is reserved for courts that hear appeals from both limited and general jurisdiction courts.

- These courts do not hold trials or hear evidence.
- They decide matters of law and issue formal written decisions or "opinions."

There are two classes of appellate courts:

- *Intermediate*, or Courts of Appeals.
- *Final*, or Supreme Courts.

Courts of appeals. The intermediate appellate courts are known as courts of appeals. Approximately half the states have designated intermediate appellate courts.

- These courts may be divided into judicial districts that hear all appeals within their district.
- They will hear and decide all issues of law that are raised on appeal in both civil and criminal cases.
- Since these courts deal strictly with legal or equitable issues, there is no jury to decide factual disputes.
- These courts accept the facts as determined by the trial courts.
- Intermediate appellate courts have the authority to reverse the decision of the lower courts, and to send the matter back with instructions to retry the case in accordance with their opinion.
- They also may uphold the decision of the lower court.

In either situation, the party who loses the appeal at this level may file an appeal with the next higher appellate court.

SUPREME COURTS

Final appellate courts are the highest state appellate courts. They may be known as *supreme courts* or *courts of last resort*. There may be five, seven, or nine justices sitting on this court depending on the state. This court has jurisdiction to hear and decide issues dealing with all matters decided by lower courts, including ruling on state constitutional or statutory issues. This decision is binding on all other courts within the state. Once this court had decided an issue, the only potential appeal left is to file in the federal court system, but only if grounds for federal appellate jurisdiction exist.

The Federal Court System

While state courts had their origin in historical custom, federal courts were created by the U.S. Constitution. Section 1 of Article III established the federal court system with the words providing for "one Supreme Court, and . . . such inferior Courts as the Congress may from time to time ordain and establish." From this beginning, Congress has engaged in a series of acts that has resulted in today's federal court system. The *Judiciary Act of 1789* created the U.S. Supreme Court and established federal District Courts and Circuit Courts of Appeals.

FEDERAL DISTRICT COURTS

Federal District Courts are the lowest level of the federal court system. These courts have original jurisdiction over all cases involving a violation of federal statutes or other instances of statutorily-defined federal jurisdiction. These district courts handle thousands of cases per year.

FEDERAL CIRCUIT COURTS

Federal Circuit Courts of Appeals are the intermediate appellate level courts within the federal system. These courts are called circuit courts because the federal system is divided into 11 circuits. A Twelfth Circuit Court of Appeals serves the District of Columbia area. These courts hear all appeals from U.S. District Courts and habeas corpus appeals from state court convictions. These appeals are usually heard by panels of three of the appellate court judges rather than by all the judges of each circuit.

U.S. SUPREME COURT

The United States Supreme Court is the highest court in the land. It has the capacity for judicial review of all lower court decisions, as well as state and federal statutes. By exercising this power, the Supreme Court determines which laws and lower court decisions conform to the mandates set forth in the U.S. Constitution. The concept of *judicial review* was first referred to by Alexander Hamilton in the Federalist Papers, where he described the function of the Supreme Court as ensuring that the will of the people will be supreme over the will of the legislature (*The Supreme Court of the United States*, no date). This concept was firmly and finally established in the U.S. judicial system when the Supreme Court asserted its power of judicial review in the case of *Marbury v. Madison* (1803).

Although it is primarily an appellate court, the Supreme Court has original jurisdiction in the following cases:

- Cases between the United States and a state.
- Cases between states, and cases involving foreign ambassadors, ministers, and consuls.
- Cases between a state and a citizen of another state or country.

The court hears appeals from lower courts including the various state supreme courts. If four justices of the U.S. Supreme Court vote to hear a case, the court will issue a Writ of Certiorari. This is an order to a lower court to send the records of the case to the Supreme Court for review. The court meets on the first Monday of October and usually remains in session until June. The court may review any case it deems worthy but it actually hears very few of the cases filed. Of

approximately 5,000 appeals each year, the court agrees to review about 200, but may not issue an opinion on each case.

VICTIM CASES AT THE SUPREME COURT LEVEL

The Supreme Court handles perhaps the broadest conceivable array of legal and social issues. Recent victim-related Supreme Court decisions have addressed the following topics:

- Victim impact statements.
- Hate crimes.
- Child victims of crime.
- Notoriety-for-profit for perpetrators.

The Juvenile Court System

Because of the significant increase in importance of juvenile crime in our society, an overview of juvenile courts within the state and federal court system is important. While there are some differences, both federal and state systems were initially founded upon the concept of rehabilitation of young offenders. Additionally, both systems wanted to shield juveniles from public scrutiny; therefore, each contained provisions for keeping juvenile matters confidential.

THE FEDERAL COURT JUVENILE SYSTEM

When Congress addressed the issue of juvenile offenders, it established two alternatives for the prosecution of juveniles:

- The juvenile can waive his or her rights to be treated as a juvenile.
- The juvenile can have the matter treated as a civil proceeding called juvenile adjudication.

If the court finds that the juvenile committed the offense, he or she faces a series of federal sanctions including detention. There is a federal preference for state prosecution of juveniles since there is no separate federal juvenile court judge or juvenile detention system. If a juvenile is adjudicated to be a delinquent, he or she is placed in a state juvenile facility or on juvenile probation. The federal government contracts with states for this service.

Until the passage of the *Crime Control Act of 1990*, the federal government only prosecuted juveniles who committed crimes on federal reservations, where the states had no jurisdiction. The *Crime Control Act* added two other categories of juveniles who fall under federal juvenile court jurisdiction: juveniles who commit

felony crimes of violence and/or those juveniles involved in certain drug felonies. Similar to most state court systems, federal law allows for the transfer or certification of a juvenile to "adult status." This procedure allows juveniles to be tried as adults in either the state or federal court system.

Under federal law, juveniles are those persons under 21 who commit a federal offense before their 18th birthday. A federal judge acts as the federal equivalent of the state juvenile court judge. The proceedings are typically confidential with no members of the news media in attendance. Federal jurisdiction in juvenile matters is established where:

- The state does not have jurisdiction.
- The state does not have programs or services available for juveniles.
- The offense charged is a violent felony or drug offense and there is a substantial federal interest in the case.

A juvenile proceeding is initiated by the filing of an information. In most cases, the U.S. Attorney must file a certification stating that there are grounds for federal jurisdiction. The hearing in federal court is very similar to a court trial.

THE STATE COURT JUVENILE SYSTEM

The separate handling of juvenile justice matters has roots throughout history. Even in earlier periods in America, certain specific juvenile accommodations were in use. However, the present day American state-level juvenile court system dates back to 1899 when the state of Illinois passed the *Illinois Juvenile Court Act*. It was at that time that the juvenile court system as we know it today came into existence (Fox 1972). This statute separated the juvenile court system from the adult criminal system. It labeled minors who violated the law as "delinquents" rather than criminals, and required that juvenile court judges determine what "is in the best interests of the minor" in rendering their decision.

The juvenile court system is guided by five basic principles:

1. The state is the ultimate parent of all children within its jurisdiction (the doctrine of *parens patriae*) and has the power to step into the parental role *in loco parentis*.
2. Children are worth saving and the state should utilize non-punitive measures to do so.
3. Children should be nurtured and not stigmatized by the court process.
4. Each child is different and justice should be tailored to meet individual needs and requirements.
5. The use of noncriminal sanctions are necessary to give primary consideration to the needs of the child (Cadwell 1966, 358).

It is important to note that each state determines its own jurisdictional age of "minors" handled by its juvenile system. Most involve children who are under eighteen years of age. A few states use higher ages, up to twenty-one, usually for specific issues. In response to increasingly violent juvenile crime, some states have lowered their upper age limit for juvenile jurisdiction to fifteen, and even fourteen years of age.

While these principles were originally adopted for delinquents or minors who committed criminal acts, they have been broadly applied to proceedings involving children who are victims of abuse. Juvenile courts have jurisdiction over three types of minors:

- Delinquents.
- Status offenders.
- Dependent children.

Delinquents are minors who have committed criminal offenses. *Status offenders* engage in acts that are not problematic if committed by an adult, such as truancy, running away from home, or incorrigible behavior. *Dependent children* are those who are in need of state intervention because of abuse or neglect by their caretakers.

ABUSE AND NEGLECT PROCEEDINGS

While the procedure is basically the same for delinquents as well as dependent minors, the juvenile court process dealing with children who are victims of abuse or neglect is of particular importance to victim service providers:

- This process is normally initiated by filing a petition with the court.
- A petition is a formal pleading that alleges that the parents or custodians endangered the health or welfare of the child.
- The petition may allege neglect, physical, emotional or sexual abuse of the child and gives the juvenile court authority to act.

Detention hearings in child maltreatment. Once the petition is filed, many jurisdictions hold a *show cause* or *detention* hearing. This hearing is usually conducted within twenty-four to forty-eight hours after filing the petition or the emergency removal of the child. The detention hearing requires child protective services or police to produce evidence justifying the emergency removal of the child, or to present evidence that would allow the court to order the removal of the child if he or she is still in the custody of the parents. The parents may also admit or deny the allegations contained in the petition at this hearing.

- If they admit the allegations, the court orders child protective services to conduct an investigation to determine where the child should be placed as a result of the admissions by the parents.
- If the parents deny the allegations, the court sets a date for an adjudicatory or jurisdictional hearing.

Pending this hearing, the court may order the child temporarily placed in a living arrangement outside the home.

Child abuse and neglect adjudicatory or jurisdictional hearing. An adjudicatory or jurisdictional hearing is used to determine if there is sufficient evidence to determine whether the allegations in the petition are true. At the conclusion of this hearing, the court will render its decision. If the petition is upheld, the court sets a date for a dispositional hearing. If the petition is not upheld, the child is returned to the parents and the case is dismissed.

- During the adjudicatory hearing, the state presents evidence to support its claim that the child has been abused.
- This may take the form of having the child testify to the incident, or experts employed by the state may render their opinion regarding the facts surrounding the case.
- The state is represented by a juvenile prosecutor, state's advocate, county counsel or other governmental attorney.
- The parents have a right to cross examine witnesses and present any evidence they desire in rebuttal to the state's evidence.
- At the end of the hearing, both parties may present arguments in favor of their position.

The burden of proof to uphold the abuse or neglect petition is the same as a civil case. In civil trials, the plaintiff has the burden of proving the case by a preponderance of the evidence. This is normally defined as slightly more than fifty percent. A criminal case requires proof beyond a reasonable doubt. This is not proof beyond all doubt, but it is proof of the "material facts to a moral certainty" that they did occur.

- In juvenile dependency cases, in order to remove the child from the custody of his or her parents, some jurisdictions require proof by clear and convincing evidence. This is more than a preponderance of the evidence, but less than beyond a reasonable doubt (Otterson 1979).

Once the adjudicatory or jurisdictional hearing is concluded, the next hearing to occur is the dispositional hearing. This hearing is to determine where the child

should be placed. The court will decide whether the child should be immediately returned to his or her parents or placed in an out of home environment for a period of time. The guiding principle in this hearing is "the best interests of the child." If the court orders the child placed outside the home, it may schedule periodic reviews to determine if or when the child will be reunited with the parents. Typically, a specific plan regarding placement is established and monitored.

From the beginning of the intervention process until the final dispositional hearing and beyond, every party in the action has certain rights. The parents and the child each has distinct rights that must be observed and protected. These rights include:

- Notice.
- An opportunity to be heard and present evidence.
- The right to confront and cross-examine witnesses.
- Effective representation by an attorney.

In a dependency hearing, the rights of a child include appointing an attorney who will speak on behalf of the child. This attorney must represent what he or she believes is in the best interests of the child regardless of what CPS or the parents' advocate believes is appropriate. In some jurisdictions this is a government-funded attorney; in others, it is a private attorney appointed by the court to represent the child. Depending on the case, the attorney may side with the parents and argue for return of the child to their care, or the attorney may take the position that it is in the best interests of the child to be removed from the custody of the parents. Even if the child is removed temporarily from the custody of his or her parents, the child has a right to reunification efforts after a reasonable time.

Many jurisdictions additionally engage Court Appointed Special Advocates (CASAs), or similarly trained (typically non-attorney) individuals. The role of these child advocates is to present to the court an independent analysis of what is best for the child. This is particularly important; as the child's legal representative, the court-appointed lawyer must forward the child's wishes when an objective view would be to the contrary. For example, the lawyer may decide that he or she must vigorously advocate a juvenile's wish to return home, while an independent child advocate may determine that this is not actually in the child's best interest.

During dependency hearings, parents have a right to notice of the hearing, an opportunity to be present at that hearing and to be represented by an attorney. They may present any evidence they desire to rebut the charges. If the child is removed from their custody, they have the right in most jurisdictions to a re-

unification plan that will allow them to regain custody of the child once they have finished treatment or counseling or complied with other court orders.

VICTIMS' RIGHTS IN JUVENILE DELINQUENCY MATTERS

Among the most rapidly changing areas in the victim assistance field is the extension of victim rights in juvenile delinquency proceedings. Historically, juvenile courts have been closed proceedings and records have been generally confidential. Even the victim was unable to learn much, if anything, about the progress of a case against the juvenile who allegedly offended against them. Juvenile delinquency proceedings are analogous, in many ways, to adult criminal trials, with all the typical obstacles to victim participation. The juvenile court's confidentiality provisions for alleged delinquents exacerbate these obstacles tremendously.

Many states have, or are, considering rolling back their previously hard and fast confidentiality statutes. States like Connecticut, Missouri, and Arizona have gone further to provide for victims' rights and accommodations in juvenile courts that mirror those in adult courts. This provides fertile ground for expansion of victim advocacy and assistance efforts to a previously underserved population, victims of juvenile crime.

Definition of Terms

Adjudicatory or Jurisdictional Hearing: Used to determine if there is sufficient evidence to find the allegations in the petition are true.

Delinquents: Those minors who have committed criminal offenses.

Status Offenders: Minors who are truant from school, run away from home or are considered incorrigible.

Dependent Children: Those who are in need of state intervention because of neglect or abuse by their caretakers.

Detention Hearing: Requires child protective services or police to produce evidence justifying the emergency removal of the child or present evidence that would allow the court to order the removal of the child if he or she is still in the custody of the parents.

Dispositional Hearing: To determine where the child should be placed.

Parens Patriae: Meaning "the country is the parent," this doctrine is fundamental to the juvenile court's power to decide on placements, treatment and other determinations regarding children.

Petition: A formal pleading that alleges that the parents or custodians endangered the health or welfare of the child.

Writ of Certiorari: An order to a lower court to send the records of the case to the Supreme Court for review.

Federal and State Jurisdiction Self-Examination

1. Describe how the federal and state courts function.
2. Describe the differences between courts of limited jurisdiction and courts of general jurisdiction.
3. What are the principles upon which the juvenile justice system was founded?
4. Describe the cases over which the U.S. Supreme Court has original jurisdiction.

Chapter 2: The Criminal Justice System Continuum

Section 2, Dynamics of the Criminal Justice System

Abstract

The criminal justice system involves many different agencies and individuals. Each of these has specific roles and responsibilities within the system. The victims' role within the system must be understood in this context. In large part, legislatively established "rights" provide victims with the means to make the system more accountable to them.

Learning Objectives

Upon completion of this section, students will understand the following concepts:

- The basic roles and responsibilities of professionals along the criminal justice system continuum.
- The interactions among these individuals and agencies and how these can assist victims.
- The basic tenets of victims' rights laws.

Introduction

One of the most fundamental functions of any civilized society is the protection of its citizens from criminal victimization. In the United States, the primary responsibility for protecting innocent people from those who would harm them rests with the criminal justice system. The criminal justice system involves many components that are reviewed in this section. The effectiveness of this system relates directly to the appropriate balancing of rights, roles, and responsibilities of the various participants within the system.

The criminal justice system involves a delicate balance among its many components in the search for truth and justice. This section discusses the dynamics of this balance among the various agencies and professionals within the criminal justice system, and how the victim of crime figures into these dynamics.

ELEMENTS OF THE CRIMINAL JUSTICE SYSTEM CONTINUUM

There are many elements and "players" within the criminal justice system that need to be understood if one is to effectively advocate for the rights of crime victims. Of course, a fundamental precondition is that many of these rights have been established within the legislative and case law framework in different states.

Assuming certain basic rights and protections are in place, then victims and their advocates have some foothold to enforce these rights. Those primarily responsible for assuring that victims are afforded the protections and assistance they deserve are criminal justice system professionals.

The criminal justice system, at its fundamental level, includes the following:

- Law enforcement.
- Prosecution.
- Defense counsel.
- Judiciary.
- Probation.
- Institutional corrections.
- Parole.

Allied professions, such as mental health, child welfare, medical, and others, often have significant roles within the criminal justice process. The dynamics of these professional perspectives within the system need to be understood to best protect victims' rights.

NEED FOR IMPROVED TREATMENT OF VICTIMS

Victims of crime have historically been treated less than adequately within the criminal justice system. The vestiges of a victim-oriented or victim-driven system, with private prosecution or so called "vigilante" justice, have given way over the last decades to an offender-based criminal justice system (Carrington 1975; Shapland 1985; this publication, Chapter 4). Much progress has been made in recent years to begin balancing the system to provide victims with rights and services (Carrington 1975; Shapland 1985). Recent initiatives based on a restorative justice or community justice approach seek to hold offenders accountable and, at the same time, provide victims with input and supportive services and promote greater involvement of the community in justice-related matters.

In order to continue these important efforts, victims and their advocates must understand and learn to work with the delicate balance among the various entities within the criminal justice system.

Victims and the criminal justice system. Victims of crime deserve rights and services within the criminal justice system that begin at the point of reporting a crime to the police and continue through the entire criminal justice and corrections processes. At each point along this continuum, criminal justice agencies and professionals have opportunities and obligations to provide victims with assistance, services, and accommodations to ease their difficulties in what is already a very trying, tragic time. The criminal justice system can minimize and avoid inflicting "secondary victimization" that has often characterized much of the plight of victims of crime.

Access to services. Access to services is an extremely important component of any service delivery plan, and depends greatly on the physical location and accessibility of such services. For example, police officers should be trained and updated on a regular basis about existing victim service programs--including twenty-four-hour emergency crisis response and shelter--and how to make appropriate referrals. Court-based advocacy programs should be established in *all* adult and juvenile court facilities. Probation officials must guarantee that crucial victim impact information and restitution requirements are incorporated into their recommendations to the court relevant to an offender's sentencing and community supervision plan. Correctional institutions should include important victim information, such as notification requests, victim impact statements, and requests for protection, in offender files or databases, with security precautions established to protect victim confidentiality. Paroling authorities should encourage and accept victim impact statements and offer victims whatever reasonable protections they request if an offender is released to parole supervision.

Training and technical assistance. Victim sensitivity training should be provided to *all* criminal and juvenile justice professionals as part of mandatory orientation educational programs as well as continuing education. Such training should include the following:

- The scope of crime and victimization.
- The trauma of victimization, with an emphasis on responses that are unique to different types of victims.
- Victims' rights accorded by constitutional and statutory mandates as well as by agency policy.
- The short- and long-term needs of victims (physical, financial, and psychological), with a focus on why appropriate referrals for follow-up assistance are so important.

- Cultural competency and sensitivity.
- The needs of particularly sensitive victims, including children, the elderly, and victims with disabilities.
- The need for multi-disciplinary approaches to victim assistance and services from the criminal justice system, including the use of inter-agency agreements that stipulate the various agencies' roles and responsibilities, to ensure a "seamless" delivery of services.
- The role of allied professionals in enhancing criminal justice-based victims' rights and services.

"Cross training" is also essential to the delivery of services to victims within the criminal justice system. Just as service providers want criminal justice system officials to be knowledgeable about and consistent in their enforcement of victims' rights, criminal justice system officials want victim advocates to understand the scope and processes of the criminal justice system. Orientation, continuing education, and cross training help guarantee that the criminal justice system continuum *includes* and *involves* victims and their concerns.

Core components of victim services. All agencies along the full continuum of the criminal justice system should develop a comprehensive system of services that is "victim-centered." The National Center for Victims of Crime, through an Office for Victims of Crime-sponsored project entitled *Focus on the Future*, has identified nine core components of an effective criminal justice-based victim assistance program. These components are designed to help victims navigate the criminal justice process, afford victims their legal rights, and make their overall participation less intimidating and burdensome. The following are services which can be multi-disciplinary (NCVC 1992):

- Orientation to the criminal justice system and process.
- Assistance to victims and witnesses who must testify.
- Crisis intervention.
- Information about individual case status and outcome.
- Assistance with compensation and restitution.
- Facilitating victim participation in the criminal justice system.
- Facilitating property return.
- Information about and referral to community services.

- Education and training for the public, justice system personnel, and other local service providers about the needs and rights of victims in the criminal justice system.

In addition, witness coordination and post-disposition services, such as monitoring of restitution payments and notification regarding an offender's incarceration status, are very important.

Basic services for victims and witnesses should be available at *every* stage of the criminal justice process, as described below. It is important to note that these victim services can be provided by multiple agencies or through multi-disciplinary efforts.

Criminal Justice System Agencies' Roles and Responsibilities

LAW ENFORCEMENT

Evolving from the earlier vestiges of sheriffs or constables, modern police forces are highly structured organizations that are accorded considerable authority, particularly the power of arrest that is provided each sworn law enforcement officer (Pacific Law Journal 1992). Law enforcement agencies have traditionally addressed issues involving the general welfare of the public at large. As noted in Ryan (1994), in 1829, Sir Robert Peel included the following in his basic tenets of policing:

“To maintain at all times a relationship with the public that gives reality to the historic tradition that the police are the public and the public are the police; the police being only members of the public who are paid to give full-time attention to duties which are incumbent on every citizen, in the interest of community welfare . . .”

As the "first responders" to most crimes, police departments serve a critical and primary role in providing immediate intervention and assistance to victims of crime. Unlike most social service agencies, police departments are typically open every day of the year, twenty-four hours a day. As such, there is tremendous responsibility on the part of law enforcement officers and civilian personnel to provide sensitive and supportive victim services.

It is important to keep in mind that the three primary functions of law enforcement are to do the following:

- Protect life and property.
- Prevent crime.
- Apprehend offenders (Barlow 1990).

Police role in victim services. Although police departments today tend to provide more and better victim services, these services were not always part of traditional policing. The positive change on behalf of providing quality victim services has been very encouraging; however, some police officials have perceived their victim assistance responsibilities as a secondary responsibility, at best.

Victim sensitivity training for police officers comprises an important improvement. In the past, police academies have not provided adequate training for law enforcement personnel regarding victimization and the effect that crime has on crime victims. This means that when under trained law enforcement personnel come into contact with an emotionally distraught victim, a victim's confidence and willingness to participate in the criminal justice system may be undermined.

Officers who initially respond to a crime scene, as well as investigating officers, are responsible for gathering evidence that can lead to arrest and prosecution of alleged perpetrators. Often the questions they ask victims appear to be judgmental or even blaming, despite their level of victim sensitivity. Police officials who interview victims must clearly establish that their role is to obtain relevant facts and evidence. While their line of questioning may *appear* to be judgmental or blaming, that is *not* their intent. This simple clarification can help officials obtain pertinent information without contributing to further victim trauma.

Much progress has been made over the last decade to increase law enforcement sensitivity to victims' issues. The establishment and expansion of law enforcement-based victim services programs have benefited both law enforcement and victims. When effective victim service programs are provided through a police department, law enforcement officers are able to devote their time to the primary law enforcement responsibilities of investigating crimes and arresting suspects. Victims are well served because basic services are provided by law enforcement. This is extremely important because in a large majority of crimes, no perpetrator is ever apprehended. This means that court-based programs will never come into contact with large numbers of victims. Victims' only hope for assistance from the criminal justice system is at the police-based level.

The move toward *community policing* in many jurisdictions has important implications for victims and those who serve them. Community policing involves partnerships with people who reside in neighborhoods that officers regularly patrol to increase opportunities for crime prevention, early intervention for people at risk of offending or victimization (especially juveniles), and services to individuals and neighborhoods that have been hurt by crime.

At its best, community policing creates a network of involved individuals who are available and willing to provide important witness information, as well as support for their neighbors who have been affected by crime. Community policing

partnerships have resulted in neighborhood-based training and information initiatives that educate people about personal safety, victim and social services, and victims' immediate- and long-term needs that can be met by the community.

With more officers visible and active on the street and in neighborhoods, the delivery of victim services can be provided more swiftly and can involve supportive advocacy from *all* facets of a neighborhood or community (such as businesses, churches, and social services) in measures that reflect the cultural, gender, economic, and geographic diversity of the community.

The specific roles and responsibilities of law enforcement officials to victims of crime. Police-based services provide essential assistance to victims of crime, including on-site crisis intervention and securing emergency medical assistance. Additionally, law enforcement programs may provide information and referrals to services and resources that can aid in a victim's short- and long-term reconstruction. Essential services should include the following:

- Provision of contact information for assistance and protection that victims can access twenty-four hours a day, seven days a week.
- Orientation to the law enforcement and investigatory process.
- Provision of or referral and accompaniment to crisis intervention and psychological first aid.
- Accompaniment to emergency medical services in cases involving injury.
- Contacting a victim service professional to provide on-site assistance and support, upon request from the victim.
- Providing information to crime victims about their constitutional and statutory rights, victim compensation availability, and referrals for assistance to complete compensation forms.
- Securing the victim's property if personal safety has been compromised as a result of crime, or if it is to be used for evidentiary purposes.
- Personally contacting the victim by telephone or in person twenty-four to forty-eight hours following the initial response to see if assistance has been sought and/or received.
- Providing immediate referrals (verbally and in writing) to community agencies that offer emergency services and information about financial assistance to all victims. For example, brochures that include information about emergency and long-term services and victim compensation should be developed in different languages and given to victims. Similarly, TTY telephone services should also be made available.

- Participating in multi-disciplinary efforts with other entities that comprise the criminal justice system to ensure a seamless delivery of rights and services to victims of crime.

Law enforcement agencies should also establish and enforce strict property return protocol and procedures. This should be a standardized, jurisdiction-wide program--closely coordinated with prosecutors' offices and the courts--that can eliminate potential confusion about exactly which property return rights and procedures are enforced by different law enforcement agencies.

Essentially, police-based services, when adequately staffed and funded, can provide critical assistance and information to victims as they progress through the criminal justice system. Perhaps most important, every law enforcement agency at the federal, state, and local levels should assign a staff member to serve as a liaison to crime victims and victim services. This designation will enhance all roles and responsibilities described above and will coordinate and streamline victims' rights and the delivery of victim services.

PROSECUTION

When law enforcement has investigated a crime and a suspect has been arrested, the case is then referred to a prosecutor or solicitor as we call them in South Carolina. Although each state's laws and procedures provide for different ways to initiate a criminal action, this is usually handled through either an initial court appearance or some process leading to charging and arraignment. At this point, information regarding the investigation and facts of the crime is presented by law enforcement to the court with the assistance of prosecutors, and appropriate charges are levied against the defendant. When appropriate, he or she is "bound over for trial" on the charges levied.

Again, victim advocates should be mindful that the solicitor's primary role is the successful prosecution of criminal cases. This is accomplished within specific budgetary and human resources limitations. The typically limited resources made available to dispose of each case in the most just, yet *efficient* manner possible is a tremendous motivation to dispense cases, in light of the often overwhelming workload handled by most solicitors' offices. This motivation/pressure often conflicts with the needs and desires of individual victims, who want their particular perpetrator prosecuted to the full extent of the law. Consequently, victims' expectations are often not fulfilled, and the case is disposed of early on, most often through the use of a non-trial settlement, usually referred to as *plea bargaining*.

Plea bargaining. Plea bargaining allows the defendant to avoid a trial and the possibility of a verdict that may result in a more severe sentence by agreeing to plead guilty to a lesser offense. Victims are often most distressed at the perceived ability of the defendant to "get off easy" by bargaining with the

prosecutor to reduce the severity of the offense of which they may actually be guilty. Many victims and advocates rightfully consider victim participation in the plea negotiation process as essential to providing victims with a voice in the system. Any plea negotiation should include an opportunity to present the impact of the crime on the victim--a victim impact statement--as well as the opportunity for the victim to consult with the prosecutor *prior* to any plea agreement. Under the South Carolina crime victims' right statute, victims have the right to be consulted about potential plea bargain agreements.

Diversion. In non-violent and/or first-time offenses, prosecutors can recommend *diversion* of the case. Essentially, in diverted cases, the offender will be required to complete certain conditions--such as paying restitution, community service, victim/offender programming (with the victim's consent), and/or educational or treatment programs--in order to avoid having a criminal record. Diversion agreements should be confirmed only with the consent and agreement of any victim(s) involved in the case. Diversion agreements can be revoked at any time if an offender fails to comply with the conditions of the diversion agreement.

Trial. Assuming a case goes beyond the plea negotiation stage to trial, the defendant continues to receive basic protections found in the United States Constitution, state constitutions, and pertinent statutory law and case law. Volumes of materials are available about defendants' rights. These include, for example, the right to obtain all exculpatory evidence from the prosecution, which would tend to prove the innocence of the defendant. Also, the defendant has the right to confront and cross-examine his or her accusers. Often, this is very difficult for the victim, who must be well prepared to withstand the onslaught of cross-examination by an often aggressive defense counsel. Defense counsel typically use methods that involve the strategy of "defense by distraction." This approach is based on the notion that in order to place any possible "reasonable doubt" within the minds of the jury, a defense lawyer will attempt to focus attention on any other possible factor than the defendant's own actions. If the defendant is not released on various technical violations of his or her rights that may arise (for example, from search and seizure issues), attempts will be made to blame others for the situation. The police will be accused of other violations, society may be implicated as the true cause of the problem, and especially victims are often blamed for their "contribution" to their own victimization. This can be a very difficult process for victims, and they need to be well prepared and supported.

Prosecutors should also be knowledgeable about victim trauma, specifically as it relates to a victim's role as a witness. At the scene of the crime and shortly thereafter, victims may be unable to recall critical facts related to their victimization as a result of their trauma. Their knowledge of the details of the crime can increase significantly with appropriate crisis intervention and trauma response. However, any changes in their original witness statements may be challenged by defense counsel. As a result, prosecutors need to be able to

explain the relationship of crisis reactions to victims' original statements, and how consistent ventilation about the crime and appropriate validation from supportive individuals can actually help victims better remember and articulate vital details as witnesses.

A number of services can and should be provided by prosecutor-based victim assistance programs. The most important of these are appropriate notification programs regarding the status of the case and the delays that often occur in the progress of a criminal prosecution. Victims are most often distressed by a perceived or real lack of progress in their cases and the need to repeatedly rearrange their personal and work lives to attend court hearings that are often delayed. Also, victims may require assistance in attending and participating in court proceedings, protection from intimidation and harm, basic orientation to the criminal justice system and their appropriate role within it, and other services and interventions that are described at length in other chapters, such as obtaining restraining orders and filing victim impact statements. Of course, referrals to appropriate victim assistance and victim compensation programs should be made by the prosecutor's office.

The American Bar Association has provided numerous guidelines for prosecutors and others within the criminal justice system regarding the incorporation of victims' rights and needs in daily practice (see chapter *References*). Regarding prosecutorial roles, issues such as protection from intimidation and harm are recognized as well as the effect of continuances and case delays, notification services, and prosecutors' involvement in assisting victims in obtaining restitution. The ABA guidelines provide a useful compilation of victims' issues within the criminal justice system, and they are commended to the reader for further review (ABA Guidelines; Kelly 1991).

Specific roles and responsibilities of prosecutors to victims. While the prosecutor's role is to present the government's case to the court, and see that justice is achieved in every case forwarded to his or her office, many important activities rely upon the involvement of victims. Although they are *not* the "victim's attorney," prosecutors have opportunities to keep victims informed and involved, to provide appropriate accommodations in the pre-trial and court settings, and to follow up with information and referral, as needed. These opportunities should include the following:

- Providing contact information for assistance and protection that victims can access twenty-four hours a day, seven days a week.
- Providing orientation to the criminal justice process.
- Providing information about the criminal justice system and proceedings in simple, layperson's terms to help victims understand the maze of the criminal justice system. Victim information should be available in multi-lingual formats.

- Providing notification of case status at key stages of the criminal justice system.
- Sponsoring witness alert programs to place witnesses on "stand-by" to come to court appearances, thus saving victims' time and money.
- Coordinating witness appearances, i.e., scheduling witnesses; providing witness fees, per diem fees and accommodations for out-of-town witnesses; and providing assistance with transportation.
- Sponsoring victim/witness information telephone lines (including TTY services) to provide up-to-date information after hours to subpoenaed witnesses.
- Providing educational and accompaniment programs to familiarize victims with the courtroom and court processes.
- Providing a waiting area for victims and witnesses and their families in the courthouse that is separate by sight and sound from the defendant. These areas should be "child-friendly," safe, and secure.
- Offering assistance to victims in completing victim compensation applications.
- Coordinating the inclusion of victim impact information, such as written statements, allocution, and audio or video statements, into court proceedings (including diversion agreements, plea bargains, pre-sentence reports, and sentencing) with probation and the judiciary and incorporating victim input into conditions of sentencing such as financial/legal obligations, community service, and offender treatment programs.
- Offering employer, landlord, and/or creditor intervention services.
- Expediting the prompt return of property, and closely coordinating such efforts with law enforcement.
- Providing intervention, protection, and recourse to victims and witnesses who are being intimidated or harassed by perpetrators or their colleagues.
- Participating in multi-disciplinary efforts with other entities that comprise the criminal justice system to ensure a seamless delivery of rights and services to victims of crime.

A significant prosecutorial development is the establishment of "vertical prosecution units," especially for domestic violence and sexual assault cases, where specially trained prosecutors maintain caseloads of one type of victimization. Vertical prosecutors work on cases from the initial filing of charges through final disposition, streamlining this stage of the criminal justice system for

the victim. Instead of several prosecutors working on the case at various stages in the prosecution, one prosecutor is assigned the case from the point of charging through trial.

DEFENSE

Defense attorneys are an integral part of the continuum of criminal justice. In the eyes of the crime victim, defense counsel are often seen as second only to the perpetrator in their contribution to secondary victimization. However, the role of defense counsel has longstanding significance in our justice systems and must be understood. Indeed, in certain innovative victim-offender programming, defense counsel can even play an important role in assisting victims.

The Sixth Amendment to the Constitution, a part of the Bill of Rights, provides the basis for the right to criminal defense in the United States. In part, this Amendment reads that *"In all criminal prosecutions the accused shall enjoy the right to have the assistance of counsel for his defense."* Indeed, this provision of the U.S. Constitution has been expanded to require, or at least strongly favor, defense attorney involvement even before criminal prosecution commences (i.e., while the accused is being questioned after arrest when a lawyer is requested). Regrettably, victims of crime enjoy no such protections under federal constitutional law.

Significant components of the role of defense counsel include the following:

- Defending their client's constitutional rights and, therefore, defending the integrity of the constitution itself.
- Conducting an independent investigation of the case to reveal facts not known to, or revealed by, the prosecution, such as violations of their client's rights by law enforcement or inconsistencies in witness statements, forensic or other evidence.
- Preparing for trial by preparing the defendant to best aid in his or her defense, preparing witnesses that may be called by the defense, and/or preparing to cross-examine prosecution witnesses.
- Objecting to the introduction of evidence by the prosecution through witness testimony or otherwise.
- Introducing evidence that casts reasonable doubt on the prosecution's case.

Since it is, the duty and obligation of defense counsel to defend their client's constitutional and other legal rights in the most competent manner possible, it is, unfortunately, not atypical that defense counsel's actions may re-victimize the victim. Victims must be prepared for this possibility.

The obvious position that defense counsel assumes, is a natural outcome of the *adversarial* system of justice practiced in the United States. Ideally, two opposing sides equally equipped with resources and legal rights come before a neutral decision-maker, the court, to have issues settled according to the prevailing law. Of course, even a casual observer is aware of the significant failing of this system *vis-à-vis* the crime victim. However, the roles and responsibilities of defense counsel are deeply rooted in our system of justice.

Despite the adversarial nature of our legal system, there are ways in which defense counsel have and may continue to be of assistance to victims. Among these are the following:

- Defending victims of crime who are prosecuted for their own actions (e.g., battered women who kill or harm their batterers, or adult survivors of abuse or parents of abuse victims who take the law into their own hands.)
- Respecting victims' legal and constitutional rights and not unreasonably challenging them merely to harass the victim.
- Adopting and adhering to voluntary codes of ethics or practice that respect victims' rights and accommodations in criminal proceedings.
- Becoming full participants in restorative justice programs that attempt to bring victims and offenders together voluntarily in ways that may benefit both parties and even contribute to larger issues such as crime reduction. (Of course, the focus of these efforts must remain first and foremost on addressing victims' needs.)

Whether defense counsel are viewed as necessary evils, or potential participants in programs that may even assist victims, and even though some individual defense counsel may not be ethical in their criminal defense tactics, the *role* of defense counsel in our system of justice is firmly secured and must be acknowledged for the principle it represents.

JUDICIARY

The judiciary is a neutral entity that oversees the progress of a criminal action. Judges should strive to equally weigh and protect the rights of *all* parties involved in a criminal prosecution. Of course, a judge can typically take only those actions that are specified by law and procedural rules, or are otherwise within the discretion mandated by law.

Judges can provide essential protections to victims. For example, when cases involve children, certain accommodations such as allowing the victim to testify through closed circuit television or granting orders requiring defense counsel to lower themselves to the child's eye level and not raise his or her voice, as well as other methods of making the courtroom less intimidating to a child, can be

ordered. Judges can also expedite trials so as not to further victimize the crime victim due to additional delays during an already difficult process. Judges can deny motions by the defense that are clearly aimed at offending or intimidating victims.

One common technique is for defense counsel to subpoena the victims' family members as potential witnesses, request that the court order witnesses be excluded from the courtroom (sequester), and then never call the victim's family to testify, thereby preventing their attendance in the courtroom. Meanwhile, the defendant's family is allowed to sit in the courtroom, showing support for their family member who is on trial, while the victim's family may appear to be uninterested in supporting the victim or the prosecution's case because they are sequestered. Such motions, when made for such manipulative purposes, can and should be denied.

Judges are empowered to sentence convicted criminals for their crimes. It is important that judges include information regarding the full impact of the crime on the victim in their assessment of appropriate sentences. Often this information is provided through the prosecutor-based victim assistance program, a probation office, or another official source, and is typically referred to as a victim impact statement (VIS). VIS information and pre-sentence investigation reports (PSIs) are often the only comprehensive assessment of the actual injuries and losses caused by the offender available to the judge; it is crucial that this information be conveyed in a timely fashion to the sentencing court. Judges are also involved in various post disposition decisions, such as reconsideration of sentences and appeals.

Specific role and responsibilities of judges to victims. Judges can help assure that victims are provided their legal rights as well as adequate court-based services, which should include the following:

- Providing contact information for assistance and protection from the court that victims can access twenty-four hours a day, seven days a week.
- Providing courtroom orientation for victims.
- Providing victims with physical waiting accommodations that are safe, secure, and separate by sight and sound from the defendant, his/her family and friends, or the news media.
- Considering victim impact information in all cases prior to sentencing (including change of plea hearings if they do not coincide with the sentencing).
- Asking prosecutors if they have consulted with the victim prior to agreeing to sentencing recommendations.

- Including any reasonable measures requested by the victim to ensure his or her safety and security, such as protection or "no contact" orders.
- Ordering restitution that reflects the full amount of loss, including payment schedules that are realistic and making sure that restitution receives priority above fines and other legal/financial obligations.
- Ensuring that restitution orders do not "fall through the cracks" by developing a system of collection, disbursement, enforcement, and victim recourse (that involves probation, the clerk of court, corrections, and parole).
- In inter-familial criminal cases, ordering convicted offenders to pay financial obligations such as child support, costs of counseling, legal fees, or mortgage/rent payments that help the victim gain independence from the perpetrator.
- Ensuring that all relevant victim information be included in convicted offenders' files--with victim confidentiality and the security of this information guaranteed to the degree possible--that are sent to probation, parole, or institutional corrections.
- Participating in multi-disciplinary efforts with other entities that comprise the criminal justice system to ensure a seamless delivery of rights and services to victims of crime.
- Ensuring that victims have appropriate input into any conditions of supervision if probation is ordered.

Finally, judges can steer their courts toward processes that are not only "offender directed," but "victim centered" as well. While conflicts can arise between the rights of the accused/convicted offender and crime victims, more often there is no disagreement about the importance of making participation the status quo for *all* participants in the criminal justice system.

PROBATION

Probation is often a condition of a plea bargain, or is the actual sentence handed down by a court following a trial. Prior to any agreement of probation, the probation officer should interview victims as part of the pre-sentence investigation (PSI) to determine the physical, financial, and emotional impact the crime has had on them. When offenders are sentenced to probation, they submit to community supervision by a probation officer. The probationer may be required to fulfill certain requirements called *conditions of probation* that might include no contact with the victim; payment of monetary obligations to the victim such as restitution, child support, mortgage payments, etc.; payment of fines (that often support law enforcement and victim services); no use of alcohol or

other drugs (with an agreement to submit to random testing); specific treatment that addresses the probationer's criminal activities (such as sex offender treatment, alcohol or other drug counseling, anger management, etc.); and/or community service. While restitution payments are monitored by probation agencies, they are often collected by the court.

When an offender is sentenced to probation, victims should be notified of the status and location of the offender and, in particular, any of the offender's actions that may lead to revocation of community supervision.

An important condition of probation is that probationers commit no new crimes during their period of community supervision. If probationers violate any condition of their sentence, the probation agency can rescind or "revoke" probation, which results in incarceration in jail or prison.

Specific role and responsibilities of probation officials to victims of crime.

Probation officials' roles and responsibilities to victims should include:

- Providing contact information for assistance and protection that victims can access twenty-four hours a day, seven days a week.
- Contacting victims as part of the pre-sentence investigation (PSI) to sensitively assess the psychological, financial, and physical impact the crime had on them and their family.
- Incorporating any victim impact statement (allocation, written, audio, or visual) into the official PSI report to the court.
- Determining any specific conditions of probation that will ensure the victim's safety and security.
- Soliciting victims' opinions relevant to appropriate community service sanctions for the probationer, including direct service to the victim (if requested), or service to a victim assistance or community service/assistance organization.
- Determining the amount of appropriate restitution payments and developing a realistic schedule for the collection and disbursement of restitution to the victim. In some jurisdictions, probation officers are charged with physically collecting restitution payments and forwarding them to victims.
- Supervising the probationer's involvement in any victim/offender programming such as victim impact classes or panels, victim/offender mediation or conciliation, or "Impact of Crime on Victims" classes in which victims can choose to voluntarily participate.

- Notifying the victim of any probation violations that result in an offender's incarceration.
- Monitoring probationers to ensure full compliance with all conditions of probation that affect the victim's rights, safety, and security, as well as the general orders of probation.
- Providing information and referrals to victims who require assistance.
- Sponsoring Victim Advisory Councils to help probation agencies develop policies, programs, and protocols that enhance victims' rights and services, and help probation agencies and victims by serving as a liaison to victims and the victim service community.
- Participating in multi-disciplinary efforts with other entities that comprise the criminal justice system to ensure a seamless delivery of rights and services to victims of crime.

INSTITUTIONAL CORRECTIONS

When convicted offenders are sentenced to a term of imprisonment, the State Department of Corrections or Federal Bureau of Prisons assumes responsibility for their supervision. The offenders' files, which contain details from the crime, court case and sentence, pre-sentence investigation reports, and victim impact statement (when applicable), recommendations for treatment and services during the period of incarceration, and personal information, are utilized as a basis for *offender classification*. The purpose of classification is to place the offender in the most appropriate incarceration setting (minimum, medium, maximum, or super-maximum facility). The State Department of Corrections (or Federal Bureau of Prisons) houses offenders for their period of incarceration; implements and monitors work; makes educational and treatment activities available to inmates; and coordinates any release into the community with paroling authorities.

Nearly *all* of America's state corrections departments and the federal system now have victim service programs. All the roles and responsibilities enumerated below are generally sponsored and/or implemented by such programs.

Specific role and responsibilities of institutional corrections officials to victims of crime. Corrections officials' roles and responsibilities to victims should include:

- Providing contact information for assistance and protection that victims can access twenty-four hours a day, seven days a week.
- Obtaining relevant victim information, including victim impact statements and protection orders, from court documentation for inclusion in the offender's file.

- Protecting the confidentiality of victim information through protected automated databases or "flags" on paper files that delineate that this information is *not* available to inmates or their counsel.
- Providing victims and witnesses with information and recourse relevant to inmates who attempt to intimidate, harass, or harm the victim during their period of incarceration.
- Upon request, notifying victims of an offender's status, including current location, classification, potential release date, escape, or death.
- Implementing and monitoring victim/offender programming such as victim impact panels, victim/offender mediation or conciliation, or "Impact of Crime on Victims" programs.
- In some departments (such as California) monitoring, collecting, and disbursing restitution payments to victims and/or fines to state victim compensation programs.
- Ensuring that inmates receive programming that is commensurate with court orders relevant to victims, such as sex offender treatment, alcohol and/or other drug counseling, anger management, etc.
- Coordinating the physical location and logistics of parole release hearings with paroling authorities, victims, and victim service providers.
- Providing information and referrals to victims who require assistance.
- Participating in multi-disciplinary efforts with other entities that comprise the criminal justice system to ensure a seamless delivery of rights and services to victims of crime.

PAROLE AGENCIES

When inmates are released from prison, their reintegration back into the community is accomplished through the parole process. Parole is the supervised release of prisoners to the community, with conditions attached to that release that are designed to protect the safety of both the victim *and* the public. Parole is considered part of the prison sentence but is served in the community. Violations of any conditions of parole can result in *revocation*, which means the offender will be returned to an institutional corrections setting. It is important to note that some states provide for sentences of "life without possibility of parole," which equates to incarceration until an inmate's death. Also, the *Comprehensive Crime Control Act of 1984* abolished parole in the federal system; parole is currently available only to inmates who committed a crime or act of juvenile delinquency prior to November 1, 1987.

There are two main functions of paroling authorities: parole boards and parole agencies.

Parole boards. The American Correctional Association identifies four primary functions of a state parole board, which are to:

- Grant parole to prisoners.
- Supervise control of parolees.
- Discharge individuals from parole.
- Make parole revocation decisions.

In many states, paroling authorities are separate from the Department of Corrections. Parole board members in most states are appointed by and serve at the pleasure of the Governor. In some states, including California, Ohio, South Carolina, and Virginia, victims of violent crime serve as parole board members (including some through designation of a victim parole board member as a statutory provision). Each state varies in its number of board members.

Parole decisions can be made before a meeting of the full board, at hearings that have panels of three or more members present, and/or through a meeting with an individual parole board member (Wisconsin) who reports back to the full board. It is important to note that, in most states, decisions by which an inmate is considered for parole are guided by statutory requirements (state law) or by judicial decisions related to prison overcrowding.

Similar to probation, successful candidates for parole must agree to abide by certain rules, which include not committing any crimes during the period of parole; no possession of weapons; honoring protective or "stay away" orders that prevent contact with the victim; submitting to random testing for alcohol or other drugs; finding and maintaining employment and housing; paying restitution and other financial obligations, including child support, fines, and costs associated with their parole supervision; and/or limited driving privileges.

In most states, victims have the statutory and/or constitutional right to provide parole boards with victim impact information about how the crime affected them. Since many offenders are sentenced for the crimes to which they pled in plea negotiations, it is imperative that parole boards know the facts of the crime that was actually *committed*. This important input also provides victims with an opportunity to request certain conditions of parole that make them feel safer, such as protective orders or requests that the offender be paroled to a geographic location that is a certain number of miles away from where the victim resides. In most states, victim impact statements are not confidential; offenders can access the statements (with protections sometimes afforded to the victim's contact information).

Approximately half of states have victim service programs located in state parole agencies. These programs serve many important purposes, including providing victims with information and notification about a parolee's status, as well as overviews of how the parole process works (and victims' rights that are inherent in this process). Such programs serve to make a system that has traditionally been "offender directed" also "victim centered."

Parole agents. Parole agents (also called "parole officers") are responsible for monitoring the supervision of parolees. In most states, parole caseloads are astronomically high, resulting in limited supervision due to the lack of human and financial resources. The parole agent is responsible for ensuring that offenders on his or her caseload comply with all requirements of parole. When any requirement is violated, the parolee can be subject to "parole revocation." When parole revocation is recommended by a parole agent, the parolee must submit to a hearing by the parole board (or other independent and neutral entity) to determine his or her status. Crime victims of either the original crime for which the parolee was incarcerated or the crime for which the revocation is being processed should be notified of parole revocation hearings or outcomes.

Parole agents, in many states however, do have frequent contact with victims, especially in interfamilial crimes. It is essential that victims know who their offender's parole agent is and how the agent can be reached twenty-four hours a day.

Specific role and responsibilities of parole officials to victims of crime.

Parole officials' roles and responsibilities to victims should include the following:

- Provision of contact information for assistance and protection that victims can access twenty-four hours a day, seven days a week.
- Providing victims with an overview of the parole process, including parole board hearings, community supervision, parole revocation, and all related victims' rights and services.
- Providing victims with the opportunity to submit victim impact statements to the parole board, including allocution, written, audio or video statements.
- Asking victims about any specific concerns they have related to their personal safety and security if an inmate is released to parole, and incorporating any reasonable concerns into parole conditions.
- When possible under state law, providing victims with the opportunity to personally present victim impact information to the board without the inmate present and without providing access to such information by the inmate and/or his or her counsel.

- Continuing restitution orders emanating from judges or, in states where parole has authority, ordering restitution payments (and ensuring that such payments are collected and disbursed to the victim).
- Ordering important legal/financial obligations that help victims in interfamilial cases seek financial independence, such as child support, money for legal counsel or mental health counseling, mortgage or rent payments, insurance premiums, etc.
- Providing information and referrals to victims who require assistance.
- Participating in multi-disciplinary efforts with other entities that comprise the criminal justice system to ensure a seamless delivery of rights and services to victims of crime.

ALLIED PROFESSIONALS

In addition to the core criminal justice system professionals discussed above, various allied professionals have a significant impact on the criminal justice system response to involving victims. These include the following:

- Medical personnel.
- Mental health service providers.
- Child protection professionals.

Doctors, nurses, and other hospital personnel provide tremendous assistance to victims of crime. In addition to police officers, medical personnel, who also are often available twenty-four hours a day, seven days a week, are commonly the first ones to come into contact with crime victims who have experienced some form of injury. In their roles, they are uniquely suited to carefully document the condition of the victim and objectively report these findings (much of which can be utilized as evidence in criminal cases).

Of course, the immediate and appropriate treatment of the victim is paramount, but in the course of treatment, appropriate documentation provides useful information for prosecutors and victims in forwarding various criminal and other legal actions against the perpetrator. Of particular importance is the use of appropriate evidentiary collection kits to gather information in sexual assault and sexual abuse cases for later evidentiary use at trial. This needs to be done sensitively, but competently, so that the trauma of the rape examination is minimized and evidence is accurately collected.

Mental health professionals are often involved in providing testimony at trial regarding the impact of crime on victims. In addition to treating victims, mental health professionals who are expert in the evaluation of the effect of trauma on

victims are often used. It is important to note that these allied professionals and experts are heavily relied upon by the courts to make determinations regarding the damage and injuries incurred by the victims. These have important ramifications for the investigation and referral by law enforcement, by the handling of cases in prosecutor's offices, and in sentences handed down by judges.

Child protection officials have a significant role in cases involving child abuse and neglect. Depending on the jurisdiction and the nature of the victimization, these cases may be handled in a criminal court, juvenile court, or family court system. In each of these systems, it is important that the child protection official cooperate in developing the best investigation report possible for presentation at trial. Increasing use of Court Appointed Special Advocates (CASAs) and Guardians Ad Litem (GALs), whose roles are to advocate to the court on a child's behalf, provides an important voice to the needs and concerns of child victims.

As almost all victims of crime may require some medical, mental health, or other social services intervention, the coordination of these efforts within and complementary to the criminal justice system is crucial to providing the most victim-centered, victim-oriented criminal justice system response possible.

Current Status of Victims' Rights Within the Criminal Justice System

Although each type of criminal justice professional can, and often does, assist victims involved in the system, this is typically not his or her primary role. How can victims' rights be recognized and guaranteed? A fundamental component of this is victims' rights legislation (NCVC 1993, 1994). This section will briefly outline the general status of crime victims' rights in the United States today and will serve as a useful guide to advocates who wish to assess the standing of their state's victim-related laws. Of course, only a detailed analysis of specific pieces of legislation and an evaluation of their actual implementation will give a full sense of how victims' rights are being provided.

Although there are many ways in which various victims' rights can be established and protected through legislation, for the most part they can be understood in four general categories:

- Provision of specific victims' rights.
- Requirements for victim services or assistance.
- Funding mechanisms for services or rights provision.
- Victim-oriented criminal justice reform measures.

In 1982, the President's Task Force on Victims of Crime listed sixty-eight recommendations to improve the treatment of victims of crime. The goal of these recommendations was to provide for renewed balance in the criminal justice system by adding victims' rights to considerations weighed in making a determination of what is a just outcome in a case. The purpose was not to diminish the rights of criminal defendants, but to enhance the status of victims within the criminal justice system.

VICTIM IMPACT STATEMENTS

One of the most significant rights of crime victims is the right to submit victim impact statements (VIS) that include crucial information about the short- and long-term psychological, financial, physical, and emotional effects of a crime on victims. Impact statements provide victims with a voice that should be heard by courts as well as by probation, parole, and corrections officials.

VIS not only give victims an important voice in a case that has had a profound impact upon their lives, they also often improve victims' overall opinions of the justice system. In research conducted by Mothers Against Drunk Driving, two-thirds (66%) of drunk driving crash victims who were given the opportunity to present written VIS were "satisfied" with the criminal justice system. For those victims who were not allowed to submit VIS, three out of four (75%) were "dissatisfied" with the criminal justice system as a whole (Sobieski, *MADDVOCATE* 1993).

VIS also provide information to courts and corrections that is valuable in determining appropriate sentences and release-from-incarceration dates for convicted offenders. They are an integral piece of a "case puzzle" and can shed light on facts that, at the time of sentencing and release decisions, are not known, such as:

- When offenders plea bargain to lesser crimes, the judge or jury may not know or comprehend the magnitude of the criminal act, and its detrimental impact on victims.
- Often, judges and juries hear myriad details that present the alleged and/or convicted offender's version of the crime, with less attention paid to the victim's perspective.
- VIS at parole hearings, which tend to occur some time after the commission of the crime, are important to help paroling authorities understand the long-term impact the crime has had on victims and their loved ones, despite the passage of time (particularly when compared to the VIS submitted at the time of sentencing).

In the landmark publication *Impact Statements: A Victim's Right to Speak, A Nation's Responsibility to Listen* (Alexander & Lord 1994), eight important

national recommendations were offered relevant to "sound system-wide policies and procedures that clearly detail and designate the roles and responsibilities of all key players in the criminal justice system for soliciting, processing and applying victim impact information:"

- The criminal justice system should adopt policies that allow crime victims to play an integral role in the American criminal justice process. Such policies must reflect an attitude that our justice system exists because of its victims, not despite them.
- Legislation should be enacted or amended at the federal, state, and local levels to provide crime victims with the right to submit VIS by written, oral, video, audio, or other electronic means at the time of sentencing and to paroling authorities.
- Legislation should be drafted and enacted at the federal, state, and local levels that provides victims of juvenile crime with the right to submit a VIS at the time of adjudication.
- Legislation should be enacted that delegates specific authority, roles, and responsibilities at the federal, state, and local levels for the distribution, collection, and dissemination of VIS. This legislation should also provide specific mandates for accountability and outline specific penalties for noncompliance with the legislation.
- All criminal justice professionals who influence the victim impact procedure in any way must have a thorough understanding of their state's statutes and case law regarding the submission and use of VIS.
- All agencies that interact with crime victims should have VIS instruments and supplementary guides that explain the importance of VIS to victims, their right to submit one, and the criminal justice system's use of VIS.
- Statewide victim networks, coalitions, and criminal justice agencies should join together to evaluate the effectiveness of their VIS statutes and, if they are found inadequate, work together to amend them.
- Training and continuing education about the traumatic effects of crime victimization must be made available to all criminal justice professionals who interact with crime victims.

A new approach to VIS is being utilized in jurisdictions that operate under a restorative justice framework. This approach seeks to focus on *victim impact*, opportunities for considerable *victim input* into sentencing decisions, opportunities for victims (who so desire) to meet with their offenders in a structured setting to define the harm caused by the offense, and accountability from the offender.

A restorative VIS includes the following questions:

- How did the crime affect you and your family?
- What was the emotional impact of the crime?
- What was the financial impact of the crime?
- What was the physical impact of the crime? *(for personal offenses)*
- What do you want to happen now? *(This question provides an opportunity to offer parameters for what the system can and cannot do.)*
- Would you like an opportunity to participate in victim/offender programming? *(This question should only be utilized if the victim has been provided with a thorough overview of victim/offender options such as victim/offender mediation or dialogue and/or victim impact panels, and what they entail.)*
- Do you have a recommendation for community service if it is ordered as part of the sentence? *(This question can include direct service to the victim [upon request]; service of the victim's choice; service to a victim assistance organization; and/or having the victim select the community service from a list of options provided by the court or supervising agency.)*
- Is there anything else you would like to tell the court/agency?

The combination of "specific" and "open-ended" questions will elicit valuable insights into the victim's opinions, recommendations, and desire to participate in victim/offender programming. In addition, the victim impact statement can include a question regarding whether or not the victim wishes to be notified of the offender's status (such as violation of probation, or release from incarceration/detention), which can then be forwarded to the proper authority.

VICTIMS' BILLS OF RIGHTS AND RELATED LAWS

Among the earliest and most prevalent approaches to enacting victims' rights legislation is the passage of Victims' Bills of Rights; the first was passed in Wisconsin in 1980. An obvious reference to the first ten Amendments to the United States Constitution, which comprises the Bill of Rights, typical Victims' Bills of Rights similarly propose providing protections to individuals within the criminal justice system. Whereas the original Bill of Rights focused on defendants' rights to fair and speedy trials and protections from illegal searches and seizures, Victims' Bills of Rights address fundamental protections that protect and restore the victim. Specific information about South Carolina's Crime Victims' Bill of Rights and Constitutional Amendment is presented in Chapter 5.

Victims' Bills of Rights take on numerous forms, but generally address the following victims' statutory rights:

- Information about victims' rights and referral to services.
- Protection from intimidation, harassment, and harm.
- Notification about case proceedings and delays.
- Participatory rights, such as to attend hearings and address concerns to the court, and to present a verbal, written, audio or video victim impact statement at the time of sentencing.
- Rights to confidentiality (i.e., of name and address).
- Speedy trial provisions to avoid unnecessary delays.
- Prompt return of property.
- Notoriety-for-profit provisions.
- Orders of restitution in criminal sentences.
- Compensation payments.

As stated above, Victims' Bills of Rights vary state-to-state and may include combinations of the above rights. Below is a listing of major types of victims' rights laws and the estimated number of states that have enacted them:

- Virtually all states have enacted Bills of Rights.
- Thirty-two states protect victims' rights through constitutional amendments.

The National Center for Victims of Crime (NCVC) has identified fifty-eight possible points of notification throughout the criminal justice process. Notification is provided in numerous ways:

- Twenty-five states require notice of bail or pretrial release.
- Twenty-eight states notify victims of plea bargaining/negotiations.
- Thirty-four states provide notification of sentencing hearings.
- Thirty-seven states notify victims of parole hearings.
- Forty-four states inform victims of parole release.

- Twenty-nine states notify victims of escape.

Victims' participatory rights are essential to giving victims a voice in the system. At various points along the criminal justice continuum, victims have essential input into the system. Victims are given the right to attend and/or be heard at various hearings:

- Twenty-one states provide the right to attend bail hearings.
- Nine states provide the right to be heard at pretrial release.
- Fourteen states give the victim the right to attend plea bargaining hearings.
- Ten states allow for victims to be heard at plea bargaining.
- Twenty-four states provide for victim attendance at trial.
- Forty-two states provide the right to submit a victim impact statement at sentencing.
- Seven states allow for pre-sentence report input only.
- Twenty-one states provide the right to attend parole hearings.
- Thirty-two states allow for victims to be heard at parole; thirty states mandate this right.

Victims' rights to restitution are extremely important. This provides a vehicle for victims to recover their financial losses due to the crime. It is crucial to note whether restitution is *mandatory* or *discretionary* as part of sentencing (listed below). However, there are significant issues with restitution at both award and collection time periods. For example, what factors are primarily used to determine restitution, the victims' loss or the offender's ability to pay? Also, who is responsible for assisting the victim in collecting restitution payments?

Currently restitution laws vary. For example:

- Twenty-six states require mandatory restitution unless the judge offers compelling reasons for not ordering restitution.
- Twenty-four states allow restitution to be discretionary.
- Twenty-nine states allow restitution orders to become civil judgments.

In addition, at least forty-five states have enacted laws encouraging prompt return of the victim's property. Several of these laws allow photographs to be admissible in court in place of the actual property.

Victims of crime in the federal system also enjoy certain basic rights. The *Victims' Rights and Restitution Act of 1990* provides the following rights to victims of federal crimes:

- To be treated with fairness and with respect for the victim's dignity and privacy.
- To be reasonably protected from the accused offender.
- To be notified of court proceedings.
- To be present at all public court proceedings related to the offense, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at trial.
- To confer with the attorney for the government in the case.
- To restitution.
- To information about the conviction, sentencing, imprisonment, and release of the offender.

ENFORCING VICTIMS' RIGHTS THROUGH CONSTITUTIONAL AMENDMENTS

Constitutional law is the fundamental law of the land. It provides the foundation upon which the rest of our legal structure is built. Generally described, constitutional law is superior to statutory law, and the Federal Constitution preempts state laws and constitutions when they come into conflict.

The importance of a constitutional basis for protecting rights can be traced back to the very beginning of the United States when those who opposed adoption of the Constitution were not satisfied with promises of post-enactment legislation to protect what they viewed as fundamental rights. They insisted on ten constitutional amendments they called the Bill of Rights.

Those rights in relation to criminal justice that are most recognizable to the general citizenry as defendants' rights, such as the right to a jury trial, the right to avoid self-incrimination, and the right to be free from unreasonable search and seizure, are found, at their roots, in the Bill of Rights. Victims deserve no less than such fundamental, constitutional protections.

Thirty-two states now protect victim rights through rights provided for in their state constitutions. The past decade has witnessed a flurry of constitutional amendments, and more will be considered by states in the near future.

On April 22, 1996, during National Crime Victims' Rights Week, history was made when a federal constitutional amendment was introduced in the United States Senate. Since that time, several version of the federal victims' rights constitutional amendment have been before the United States Congress. The latest version, Senate Joint Resolution 3, was introduced in January, 1999 by Senator Kyl of Arizona. If passed, it will amend the U.S. Constitution to guarantee that victims of violent crime have participatory rights throughout the criminal justice process, including rights to reasonable protection from the offender, a speedy trial, and restitution.

State constitutional amendments are quite varied. This is a result of the specific idiosyncrasies of each state's approach to their constitution and the political power of the victim rights' advocates in a particular state. Some of these amendments could be considered relatively weak and others considered strong. In most cases, a companion scheme of enabling legislation must provide for the actual programs and funding needed to ensure that victims' constitutional rights will become a reality.

ENFORCEMENT OF CONSTITUTIONAL RIGHTS

In general, when constitutional rights of any sort are not being provided, the aggrieved party must take some action to enforce their rights under the U.S. Constitution. An important, developing phase in victims' rights advocacy is the enforcement of victims' constitutional rights.

There is an adage in the law that "a right without a remedy is no right at all." Obviously, a right that cannot be enforced and does not benefit the intended person is truly not a right. For example, a victim may have a constitutional right to be notified at sentencing of an offender and to be heard by way of providing a victim impact statement to the court. What recourse should a victim have under this arrangement if he or she was not notified of the sentencing of the offender?

If a defendant was not accorded a particular right that affected his or her sentence, he or she could petition that court, or a higher court, to set aside the sentence and provide a new sentencing hearing where all the relevant rights could be provided the defendant. This is the sort of mechanism that victim advocates argue should be available to victims who are not accorded basic, particularly constitutional, rights.

Two specific forms of enforcement mechanisms illustrate the ways in which legal rights are enforced and how victims could be empowered to assure their constitutional rights. The first is petitioning the court for a *writ of mandamus*, and the second is *injunctive relief*. Although these concepts are not limited to constitutionally protected rights alone, the fundamental basis of constitutional protection would assist the legal arguments for these significant court actions.

Writ of mandamus. Commencement of a mandamus action means that the party wants the court to force someone, usually a public official in this case, to do something that they are supposed to, but are refusing to do. The case of *Marbury v. Madison*, which established the power of the courts to review the actions of other branches of government, involved a mandamus action compelling a government official to complete a ministerial act that was previously refused. Victims could seek to have the court force public officials to provide them with adequate and reasonable compliance with their constitutional rights.

Injunctive relief. The party seeking an injunction is seeking to have someone stopped from commencing or completing an act. Victim advocates are familiar with the concept of temporary injunctions, restraining orders or protective orders that compel individuals to stop doing certain things, such as in domestic violence or stalking cases. This is essentially the same mechanism that could be used by victims to stop public officials from doing what is contrary to the rights they should have under a constitutionally protected scheme. Courts could, for example, order that sentencing hearings be delayed until victim impact statement information is available.

Victims' rights protected through constitutional-level authority would allow victims a stronger legal foundation for arguing that their rights should be protected and that they are on the same level as defendant's rights, typically already protected by the Constitution of the United States and state constitutions.

VICTIMS' RIGHTS COMPLIANCE EFFORTS

The National Criminal Justice Association (NCJA), with support from the Office for Victims of Crime, examined victims' rights compliance efforts in states that have passed constitutional amendments (1998). NCJA identified six common themes among the states studied that may affect a state's level of compliance:

- Compliance with victims' rights laws is fostered when collaborative relationships among state and local officials, leaders, and criminal justice system representatives are promoted, and when concerns about the implementation of these laws are presented in a non-confrontational manner.
- Deference to local authorities and agencies for the "ownership" of victims' rights implementation is the standard approach in existing compliance oversight programs used to foster victims' rights implementation.
- Explaining to victims their rights and the responsibilities within the criminal justice system is an essential responsibility of victims' rights compliance representatives.

- Support for and an understanding of the criminal justice system and process are critical requirements of compliance oversight efforts and their employees.
- Appropriate levels of resources--financial, training, and technical assistance--to support the provision of victims' rights and services and the compliance oversight effort are necessary to ensure that criminal justice practitioners and citizens are aware of the commitment of state government to victims' rights implementation.
- There are concerns that interventions may not render immediate satisfaction for victims. While these compliance oversight efforts are significant in that they encourage a change in policy to make a criminal justice agency's policies and procedures more "victim friendly," they may not render an immediate impact or improvement for the victims who brought the issue to the attention of the state compliance agency or body.

At least three states that have passed constitutional amendments for victims' rights have also developed initiatives to encourage compliance with the provisions of their respective amendments:

- Arizona established, by legislative authority, a victims' rights program in the Office of the Attorney General. This program administers an annual plan for assisting and monitoring state and local entities that are required to implement and comply with victims' rights laws. The legal mandate states that: "The plan shall provide for the disbursement of victims' rights fund monies for audits of state and local entities that receive fund monies, and for other forms of assistance that further uniformity, efficiency, and compliance by state and local entities that are responsible for ensuring crime victims' access to justice."
- In Colorado, victims are able to file complaints with the state's Victims' Compensation and Assistance Coordinating Committee when they feel that their rights have been denied.
- Wisconsin created a new state-level Crime Victims' Rights Board in 1998 that, among other duties, can seek up to \$1,000 in civil forfeitures assessed against public officials who *intentionally* violate victims' rights. Furthermore, the Victim Resource Center within the Wisconsin Department of Justice, Office of Crime Victims' Services can mediate complaints brought by victims, and/or act as a liaison between victims and state and local criminal justice agencies (NCJA 1998).

In addition, in 1986, Minnesota established its Office of the Crime Victims Ombudsman (OCVO) to help ensure that victims are guaranteed their rights and treated fairly and appropriately by criminal justice practitioners. OCVO officials may investigate both statutory violations of victims' rights laws and alleged

mistreatment by criminal justice practitioners. In conducting their work, OCVO officials indicate that they approach the enforcement of victims' rights in a neutral and objective manner. They act not as victims' advocates, but as advocates of fair government.

IMPLEMENTATION AND PROVIDING RESOURCES

While it might appear logical that providing for victims' rights through statutory language is in itself sufficient for victims to be assured of receiving these rights, experience has not followed accordingly. The past decades of struggling to enact victims' rights laws, followed by the realization that new battles needed to be fought in implementation and funding arenas, agency politics, and other areas have been instructive with respect to the potential failure of victims' rights statutes in terms of actually guaranteeing those rights.

The dynamics of the criminal justice system can be brought into balance, and victims can become an integral part of this system. However, laws alone cannot operate in a vacuum, and should be augmented by multi-disciplinary initiatives focused on implementation, funding, evaluation, monitoring, and enforcement.

SUPERVISION OF ADULT PROBATION AND PAROLE VIA INTERSTATE COMPACTS

The Interstate Compact for the Supervision of Parolees and Probationers (ISC) provides statutory authority by Congress--which is augmented by corresponding state statutes--to regulate the transfer of adult probation and parole supervision across all 50 state boundaries, the District of Columbia, Puerto Rico, and the Virgin Islands. Activities related to the ISC are managed by the Probation and Parole Compact Administrators Association (PPCAA), which includes each state's designated Compact Administrator and, in some cases, deputies assigned to perform ISC functions.

It is estimated that as of 1999, approximately 250,000 offenders are under community supervision who are living or traveling in states other than where they were convicted. In addition to the sheer volume of offenders who fall under ISC jurisdiction, the National Institute of Corrections has identified three additional reasons why the ISC is so critical to public safety:

- *Fragmented system.* On January 1, 1996, 3,285 local probation and parole offices were operated by 861 separate agencies. This high degree of decentralization requires the establishment of protocols, guidelines, and structure within which interstate and interagency probation and parole business (such as case transfers and investigations) can be conducted.
- *Public trust and confidence.* Managing offender populations is becoming increasingly complex. State and local governments are passing measures

dealing with special offender and high risk groups, such as registries of sex offenders and notification to victims regarding offender locations. Probation and parole must be able to satisfy compliance requirements, track the location of offenders, smoothly transfer supervision authority and, when necessary, return offenders to the originating jurisdictions. Interstate activity involving offenders must be governed by public policies that ensure equity and justice for all involved parties, including victims of crime.

- *Opportunities to succeed.* There are legitimate reasons why it is more likely that an offender will succeed in a certain location more than anywhere else. Those reasons generally relate to responsible family support and employment. The existing compact permits a probationer or parolee to reside in a different state if:

The person is in fact a resident of, or has family residing within, the receiving state and can find employment there. The offender shall have an offer of employment or a visible means of support; or though not a resident of the receiving state and not having family residing there, the receiving state consents to the probationer or parolee being sent (National Institute of Corrections 1998).

Interstate compact and victims' concerns. Crime victims and victim service providers have raised significant issues relevant to the ISC, which fall into two categories: ISC management and the enforcement of victims' rights.

- *Interstate compact management.* A critical issue for victims is the lapse of time between the point when an interstate transfer is agreed to and the point where the receiving state actually accepts and begins supervision. Victims express concern about this period of time, which can range from days to months, in which a convicted offender remains, for all intents and purposes, unsupervised.

A few states, such as Pennsylvania, require mental health evaluations of potential ISC offenders prior to acceptance, which is not always required in reciprocal states. This approach, which gives receiving states important information about the offenders they will or will not agree to accept, should be expanded to all states.

Domestic violence advocates express concern that the ISC is not in compliance with the interstate policies of the Violence Against Women Act. In addition, many domestic violence "convictions" are civil and, as such, are not addressed under the terms of the ISC.

Perhaps most significant, in addition to managing an overwhelming number of offenders, compact administrators are required to manage a process that lacks appropriate funding and staffing. Increased resources

are needed to adequately address the tremendous responsibilities of managing the ISC, collecting vital data regarding compliance, and, perhaps in the future, enforcing all relevant victims' rights as a component of the ISC mandates.

- *The enforcement of victims' rights.* In testimony provided to the PPCAA in January 1999, APPA Victim Issues Committee Chair Anne Seymour noted that "victims are neither informed nor involved very often in interstate compact decisions. When transfers are authorized without knowledge of or input from victims, it can contribute to increased victim trauma, as well as real or perceived fears for their personal safety."

The APPA Victim Issues Committee and ACA Victims Committee have identified a number of issues relevant to the enforcement of victims' rights that should be considered in amending the ISC, as well as by Compact Administrators in the meantime. They include the following:

- Notifying victims of an offender's request to transfer to another state and providing an opportunity for the victim to offer input as to the ISC decision.
- Ensuring that victims' rights to notification of the offender's status in the state where the offense occurred are also fully enforced in the accepting state.
- Requiring offenders to fulfill all legal and financial obligations including victim restitution, fines and fees paid to victim services and state victim compensation programs, and child support prior to receiving an ISC transfer (unless the victim agrees to continued monitoring of financial and legal obligations under an ISC agreement).
- Offering protection measures to victims--such as "no-contact" or protective orders--upon request, which should be fully enforced regardless of the location of the offender.
- Providing victims with the name and contact information of the supervising officer/agency to whom an offender under an ISC agreement will report, as well as information about how and where to report any violations of the conditions of supervision that involve the victim.
- Development of a national integrated database to track and monitor ISC cases, that includes a secure screen with data relevant to victim notification, offender financial and legal obligations, and victim protection issues.

Promising Practices

- A pilot program in San Diego County in California provides the opportunity to record victim impact statements at the time of sentencing onto CD-

ROMS. These "electronic" statements are then made available to the Board of Prison Terms for review and consideration when an offender is up for release.

- The Municipal Court of Tucson, Arizona, was one of several partners (including the police, victim advocates, prosecutors, and health care professionals) that established a Community Domestic Violence Center. The Center's victim advocates provide information on domestic violence and assistance in obtaining protection orders, either through an interactive video system or by personally taking the victim to the city court. During evening hours, weekends, and holidays, a judge is on duty at the Center where victims can appear and seek assistance (OVC 1998).
- In Tarrant County (Fort Worth), Texas, the Community Supervision and Corrections Department (CSCD) determined that technology utilized to track absconding probationers could also be used to determine the location of victims who were owed restitution. Utilizing the cost-effective services of agencies that locate missing persons, Tarrant County was able to provide over a quarter-of-a-million dollars in restitution to victims whom the county had been unable to locate through ordinary measures.
- Over one-third of state correctional agencies have implemented Victim Advisory Councils, which guide the agencies' policies, protocols, and programs relevant to victim assistance and serve as a liaison to crime victims and the victim service community.
- In North Carolina, crime victims can "virtually attend" parole board hearings through teleconference technology. This innovative approach allows victims to submit a real-time oral victim impact statement without having to travel to the hearing site and face the offender in person.

Dynamics of the Criminal Justice System Self-Examination

1. What are the seven elements/agencies that comprise the criminal justice system?
2. Identify five core components of basic victim services within the criminal justice continuum.
3. What are the four general categories of "victims' rights" that can be established and protected through laws?
4. How many states today have constitutional amendments that guarantee victims participatory rights within the criminal justice system?

Chapter 2: The Criminal Justice System Continuum

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Recommendations for Reducing Victim and Witness Intimidation.

Criminal Justice Sentencing Alternatives and Procedural Standards 18-5.9.

Criminal Justice Prosecution Function 3-3.2.

Guidelines Governing Restitution to Victims of Criminal Conduct.

Guidelines for Fair Treatment of Child Witnesses in Cases Where Child Abuse is Alleged.

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